No. 12878

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

THOMAS T. CHAMALES, Jr.,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

No. 12878

On Appeal from the District Court of the United States for the Eastern District of Washington

BRIEF FOR THE APPELLEE

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STATEMENT OF JURISDICTION

The appellant was found guilty on Count 2 of an Amended Infomation (R. 4) by a jury impaneled in the United States District Court for the Eastern District of Washington at Spokane. Appellant was acquitted as to Count 1 of said Information. Both counts charged violation of the White Slave Traffic Act, 18 U.S.C. 2421. On January 24, 1951 the District

Judge denied appellant's motion for new trial (R. 11). Appellant filed his Notice of Appeal on January 22, 1951 (R. 13). This Court has jurisdiction of this appeal under Sec. 1291 of revised Title 28, U.S.C.

ADDITIONAL STATEMENT OF THE CASE

The appellant, Thomas T. Chamales, Jr., was found guilty by jury in the Eastern District of Washington, Northern Division at Spokane, of Count 2 of an Amended Information. Count 2 alleged a violation of the White Slave Traffic Act, 18 U.S.C. 2421, and read as follows:

> "That Thomas T. Chamales, Jr., on or about the 14th day of August, 1949, did transport and cause to be transported, and aid and assist in transporting Elaine Elliot from Chicago, Illinois, to Yakima, in the Southern Division of the Eastern District of Washington, for the purpose of prostitution, debauchery and other immoral purposes."

The evidence produced at the trial by the Government was as follows: Elaine Elliot, 19 years old, a free-lance model living in Chicago, Illinois, first met the appellant Thomas T. Chamales, Jr. in Chicago approximately six weeks before Easter in 1949 (R. 34). At the time of the first meeting both appellant and Mrs. Elliot were in the process of securing divorces from their respective spouses. For a period of approximately two weeks after the first meeting appellant wined, dined, and generally feted Mrs. Elliot with the result that she fell in love with him (R. 37). During this period appellant informed Mrs. Elliot that he was operating the Commercial Hotel in Yakima, Washington for his father and he further informed her that he had the franchise for the construction of Lustron homes in the State of Washington (R. 35). When Mrs. Elliot informed appellant that she was

contemplating taking a night check room job in Chicago, he suggested that she accept a position as either his secretary or as hostess at the Commercial Hotel in Yakima (R. 36). Mrs. Elliot agreed to accept employment from appellant and agreed to accompany him to Yakima for the purpose of entering into such employment. Appellant purchased railroad tickets in Chicago for their transportation to Yakima, Washington. He purchased the tickets from his own funds (R. 38) and made arrangements for train accommodations to Yakima.

Appellant and Mrs. Elliot boarded the Northern Pacific train in Chicago pursuant to arrangements made by appellant. When Mrs. Elliot arrived on board the train she found that appellant has arranged for a single bedroom compartment for the two on the trip (R. 38). She objected to appellant to the arrangements made for the single compartment but finally agreed to accompany him on that basis (R. 38, 39). During the several day period en route to Yakima, Mrs. Elliot and appellant had intercourse on the train (R. 38). Mrs. Elliot testified that they arrived in Yakima in early March of 1949 and that she was immediately taken from the train to appellant's suite at the Commercial Hotel in Yakima. Mrs. Elliot lived with appellant in his suite at the Commercial Hotel for a period of approximately one week after their arrival in Yakima and during this period she had regular intercourse with appellant. At the end of the first week Mrs. Elliot demanded an extra room for herself and for the subsequent two week period so occupied her own room at the Commercial Hotel, again having intercourse with appellant during this period (R. 38-41).

During the three week period which Mrs. Elliot

spent in Yakima prior to returning to Chicago, appellant made no attempt to offer her employment and in fact admitted for the first time that he had nothing to do with the employment of a hostess at the Commercial Hotel since the dining room was leased to others (R. 41). She requested the position of switchboard operator at the hotel and he refused to permit her this job on the basis that she "wasn't dependable enough". Appellant also stated for the first time that she did not have the education or capability to do the secretarial work (R. 41). Accordingly, at the end of the three week period, Mrs. Elliot returned to Chicago and her transportation was paid for by appellant. The foregoing evidence was submitted on Count 1 of the Amended Information on which the jury found the appellant not guilty.

On Count 2 of the Amended Information, of which the appellant was found guilty, the following evidence was submitted: During the period of Mrs. Elliot's return to Chicago, between Easter, 1949 and the first part of August, 1949, appellant and Mrs. Elliot corresponded frequently by phone, she from Chicago to him at Yakima (R. 43). On or about August 10 to 12, 1949, appellant informed her by phone that he had arranged transportation for her back to Yakima if she would be willing to work for him (R. 45, 46). When she assured him she was willing to return to Yakima and enter his employment there, appellant informed her that he would send $125.00 to Mrs. Elliot's roommate, Marge Mahoney, to be used for the purpose of that transportation (R. 46). Accordingly, on August 13, appellant, using the assumed name of Tom Chambers, sent the sum of $125.00 by Western Union money order to Marge Mahoney at Chicago (R. 47,48, Pl. Ex. 11 and 12). The following morning Mrs. Elliot, together with Miss

Mahoney, received the $125.00 money order at the Western Union office in Chicago and later that day she took the United Airlines plane to Seattle, Washington where, by previous agreement, she was to meet appellant (R. 47). She arrived in Seattle, Washington on Sunday, August 14, 1949. She went to the Olympic Hotel from the airport to meet appellant who had agreed to have a room reserved for her there under the name of Elaine Palmer (R. 48). Not being able to locate appellant and finding that no such reservation had been made at said hotel, Mrs. Elliot then registered under her true name of Elaine Elliot at the Earl Hotel in Seattle (R. 48). About 8:30 or 9:00 p.m. that evening appellant called from the lobby and went up to her room. He was very affectionate toward her and told her that he had plans for her future. When she inquired as to the nature of these plans he advised her that he was going to "put you into a joint to work". When she inquired as to what he meant by a "joint", he gave her no immediate explanation (R. 49, 50).

Appellant stayed with Mrs. Elliot in her room at the Earl Hotel that night. The following morning at breakfast she again questioned him as to what he meant by a "joint", and he answered that he had in mind a house of prostitution. Appellant told her that he had plans of placing her in one house of prostitution for four weeks and in a second house for an additional four weeks, by which time she would have had sufficient experience to manage a house of prostitution in Texas which appellant said he planned on opening (R. 50, 51). Mrs. Elliot demurred strenuously to any such employment and the proposal was temporarily dropped by appellant.

That afternoon appellant and a friend of his, by the

name of Tex Reed, and Mrs. Elliot drove to Yakima from Seattle by way of Cle Elum. They stopped at Cle Elum to pick up a girl by the name of Vicki Reed, who was Tex Reed's wife, and they arrived at Yakima that evening (R. 51, 52). At Yakima appellant took Mrs. Elliot by back door into the Commercial Hotel to his room and there gave her a phenobarbital tablet to quiet her hysterical condition (R. 52). The next day appellant drove Mrs. Elliot to the Rest Haven Motel on the outskirts of Yakima where appellant registered under the name of Richard Sullivan (R. 53, Pl. Ex. 15). That night at the Rest Haven Motel appellant again discussed the plans of prostitution with Mrs. Elliot and again she vehemently objected to such employment (R. 53, 54). He used very profane language at her and slapped her across the face.

The following day appellant drove Mrs. Elliot back to Seattle where he advised her to check out of the Earl Hotel and to check into the Wilhard Hotel under the name of Elaine Palmer (R. 55). Appellant registered Mrs. Elliot at the Wilhard Hotel as Elaine Palmer (R. 55). That evening appellant again brought up the subject of prostitution and again she remonstrated with him (R. 56). Several days after their arrival in Seattle, Mrs. Elliot finally and definitely informed appellant that she wanted no part in any of the proposals that appellant was making to her and that she desired forthwith to return to Chicago (R. 56, 57). That afternoon Mrs. Elliot reported the matter to the Federal Bureau of Investigation in Seattle (R. 57).

A most important witness for the Government in the prosecution of this case was one Betty DesCorreau who testified that she met appellant in Seattle, Washingon just a few days prior to the date Mrs. Elliot

was to arrive by plane from Chicago. Miss DesCorreau testified that appellant informed her that he had great plans for the girl coming in by plane "from California". He admitted to Miss DesCorreau that he himself was a pimp and that he intended to place the girl arriving by plane in a house of prostitution for the next several months in order that she might gain the necessary experience to operate a house of prostitution (R. 165-167). Miss DesCorreau's testimony was as follows:

> "And he said the first thing he was going to do was to slap her in the face to show her who was boss, and then he said he was going to put her in a low house of prostitution, and after that he was going to put her in a lower one so she would get to know the business, but he said after about six months that he would put her up in business of her own.
>
> "He told me that first he treats them very wonderfully, sends them flowers and takes them out and all sorts of intentions, and then they had this thing that's planned where he has an apartment, maybe, or something like a house, and he would have several good-looking friends in where they would ignore the girl when she came in, when she is used to all sorts of attention; she is probably a beautiful girl to begin with, or pretty, until the time when he would — the expression he used was get his hook in their belly, and they would do whatever he wanted them to do." (R. 166, 167).

Several days later appellant, accompanied by Tex Reed and a young lady who Miss DesCorreau identified as Elaine Elliot, drove over to Miss DesCorreau's apartment in Seattle and appellant there pointed out to her that the girl in the automobile, Elaine Elliot, was the girl of whom he had spoken earlier as the girl who had come by plane "from California" and

for whom he had plans (R. 170, 171). Appellant admonished her before he left the apartment that if he got back to Yakima and heard anything he had said repeated, he would "come back and knock you on your fanny" (R. 171, 172).

The testimony of Mrs. Elliot was substantiated in the following additional particulars by the Government. John W. Worsham, Special Agent of the Federal Bureau of Investigation, testified that he had discussed the matter of the transportation of Mrs. Eiliot with appellant on March 6, 1950. At that time appellant voluntarily admitted that Mrs. Elliot had made two trips to Yakima in 1949; that he had had sexual intercourse with her during both trips and at Yakima; that he had sent a Western Union money order for Mrs. Elliot in the sum of $125.00 to Marge Mahoney in Chicago in August, 1949 from Tacoma, Washington under an assumed name; that he had registered at the Rest Haven Motel under an assumed name with Mrs. Elliot for the reason that he "never used his correct name while shacking up"; and that he had registered Mrs. Elliot at the Wilhard Hotel in Seattle under the name of Elaine Palmer, but that appellant did deny that either transportation was for the purpose of prostitution or immorality (R. 132-139).

Mr. Wilbur R. Green called as a witness for the Government identified the original Western Union money order application and money order draft sent to Marge Mahoney at Chicago by a Tom Chambers at Tacoma (R. 145, 146). The original application for money order and the original money order itself were admitted as Plaintiff's Exhibits 11 and 12 (R. 148).

Marge G. Mahoney called as a witness for the Gov-

ernment testified as to the receipt of said money order in Chicago (R. 147, 148).

Mr. A. L. Richmond corroborated the testimony of Mrs. Elliot by identifying and producing the registration for room 235 for the night of August 17, 1949 at the Wilhard Hotel, Seattle, wherein Mrs. Elliot was registered under the name of Mrs. Elaine Palmer (R. 152, Pl. Ex. 14).

Mr. Tom Dawson on behalf of the Government corroborated the testimony of Mrs. Elliot by identifying and producing the registration of the Rest Haven Motel in Yakima, Washington for the evening of August 16, 1949, showing the registration for that night by one R. A. Sullivan (R. 154, 155) and the registration card was admitted in evidence as Plaintiff's Exhibit 15.

Answer and Argument to Appellant's Specification of Error 1.

The appellant contends, as his first specification of error, that his Motion for Acquittal should have been granted, this on the basis that there was no credible evidence from which the jury could have inferred an intent to transport Elaine Elliot from Chicago, Illinois to Yakima, Washington on or about the 14th day of August, 1949 for purposes of prostitution, debauchery or other immoral purposes.

In order to constitute a violation of the White Slave Traffic Act, Sec. 2421, Title 18, U.S.C., it is essential that the interstate transportation have for is object or be the means of effecting or facilitating the prescribed activities. *Hansen v. Haff*, 291 U. S. 559, 563. An intention that the woman shall engage in the conduct outlawed by the Act must be found to exist before

the conclusion of the interstate journey and must be the dominant motive of such interstate movement. And the transportation must be designed to bring about such result. *Mortensen v. United States,* 322 U. S. 369, 374.

Examining the evidence in the case as concerns the second count upon which the appellant was found guilty, in the light of the above principles, we find the following: Appellant wired money to Chicago from Tacoma under an assumed name. He sent this money not to Mrs. Elliot but to Marge Mahoney. The money was to be used for the transportation of Mrs. Elliot by plane to Seattle. The first night in Seattle, as testified to by Mrs. Elliot, appellant indicated what he had in mind for her, and the following morning clarified any question of his intentions by boldly stating to her that she was to be placed by him in a brothel. A night or two later the appellant registered himself and Mrs. Elliot at a motel near Yakima under an assumed name. The following night appellant registered Mrs. Elliot at the Wilhard Hotel in Seattle under the name of Elaine Palmer. The Government's witness, Betty DesCorreau, testified to her conversation with appellant a few nights before Mrs. Elliot was to arrive in Seattle by plane. She testified that appellant told her of the plans he had for placing the girl coming in by plane in a house of prostitution; that appellant was himself a pimp; that Mrs. Elliot was later pointed out to Miss DesCorreau by appellant himself as the girl who had arrived by plane and concerning whom he had spoken as the subject of his despicable plans.

It is patently apparent from the above that the only motive and the dominant purpose of the transportation of Mrs. Elliot from Chicago, Illinois to Yaki-

ma, Washington, as charged in the second count, was to place Mrs. Elliot in a house of prostitution. The appellant argues that his true purpose was to bring her to Seattle and then to Yakima for the purpose of advising her to stop pursuing him. The appellant's explanation was so naive as to be childish. The jury had the right to disregard the explanation given by appellant and accept the proof adduced by the Government.

Appellant also attempts here to argue the credibility of the witness Betty DesCorreau. The rule is, as we understand it, that the Court will not weigh the evidence by determining that the testimony of one witness was so completely discredited as to render it unworthy of belief. *Lawrence v. United States,* 162 F. (2d) 156 158 (CCA 9). The jury evidently accepted the testimony of Betty DesCorreau. This was in their province.

Viewing the evidence in this case in a light most favorable to the Government, it is apparent that there was ample evidence for the jury to determine that the dominant purpose and motive of the interstate transportation contained in the second count of the Amended Information was for Mrs. Elliot to engage in conduct outlawed by the White Slave Traffic Act.

Answer and Argument to Appellant's Specification of Error 2.

Appellant assigns as error the fact that his cross-examination of the Government's principle witness, Mrs. Elaine Elliot, was unduly restricted, and that such restriction prevented the appellant from having a fair trial. The crux of the alleged error is that the Trial Court refused to permit appellant's counsel to extensively pursue the cross-examination of the wit-

ness Elaine Elliot on collateral matters consisting of the previous loves, possible moral delinquency, and alleged false testimony given by her in a previous divorce action, for the presumed purpose of affecting her credibility.

The rule as to the admissibility of collateral matters for the purpose of impeaching the credibility of a witness is well stated in *Simon v. United States,* 123 F. (2d) 80, c.d. 314 U. S. 694, at page 85, as follows:

> "The rule is that for the purpose of impeaching the credibility of a witness he may be questioned as to misconduct, even as to collateral matters, which has a tendency to show his lack of honesty or truthfulness; *the qualification of the rule being that the party questioning him is bound by his answers and may not contradict him with regard thereto.* See Wigmore on Evidence, (2d Ed.) Vol. 2, paragraph 982 et seq.; Greenleaf on Evidence, Lewis' Edition, paragraph 459, 28 R.C.L. 607; *Tla-koo-yel-lee v. United States,* 167 U. S. 274, 277. It is said that it was within the discretion of the trial judge whether questions would be permitted as to acts of misconduct affecting credibility. We think, however, that the matter resting within the discretion of the judge is merely to the extent to which such examination may be pursued."

In *State v. Johnson,* 192 Wash. 467, 73 P. (2d) 1342, the Washington State Supreme Court announced the rule at page 471-2:

> "The rule is firmly established in this state that a witness cannot be impeached by showing the falsity of his testimony concerning facts collateral to the issue. In such matters, a party cross-examining the witness is concluded by the answers given.
>
> "The test as to whether a matter is material or collateral, within the meaning of the rule, is

whether the cross-examining party is entitled to prove it in support of his case."

In *United States v. Sager,* 49 F. (2d) 725 at page 730:

"The rule that any witness may be asked concerning any vicious or criminal act of his past life is limited. The witness may be asked about any specific incident, but his answers thereto are final and conclusive except only where a judgment of conviction of crime has been shown."

Turning to the case at bar, it should be pointed out to this Court that appellant was not prevented from cross-examining Mrs. Elliot with regard to past statements or past conduct inconsistent with her testimony in this case, *but the Court ruled that appellant would be bound by her answers.* The Trial Court's ruling in this regard was as follows:

"* * * I think, Mr. Olson, that you should be permitted to cross-examine her (Mrs. Elliot) with reference to any inconsistent statements, or statements inconsistent with her present testimony, or past conduct inconsistent with her present testimony, and specifically I think you may be permitted to ask her if she didn't testify that the injury she received, or I mean testify in a prior case, in her divorce action, that the injury she received was received from her former husband rather than from this defendant, and also I think you should be permitted to ask her if she weren't at some time only a short time or two or three months prior to meeting the defendant in love with some other man, and inquire on that line, although I think you'd be bound by her answers, and at the present time at any rate I am not going to permit you to then attempt to contradict whatever she may say by putting in these documents. Do you get what I have in mind?
Mr. Olson: Yes, I do, your Honor." (R. 118)

It is apparent that appellant's proposed cross-exam-

ination of Mrs. Elaine Elliot on matters concerning the prior love life of the witness was purely collateral since appellant was not entitled to prove it in support of his case as that rule is laid down in *State v. Johnson,* supra. It is not impossible as remarked by the Trial Court, for a woman to fall in and out of love in a six month period. In any case whether Mrs. Elaine Elliot was actually in love with appellant or not has no materiality in this case. Appellant was permitted, however, to ask the witness whether she was in love with another some months before she met appellant. Her answer was binding upon appellant, and it would have been most improper to have permitted him to pursue such a collateral matter further. The Trial Judge acted within the scope of his discretion.

The above is also true of the prior acts of moral delinquency on the part of Mrs. Elliot as claimed by appellant. The sole purpose of the appellant in pursuing this line of questioning was to shame and embarrass the witness. These matters were again collateral under the rule of the *State v. Johnson, supra,* decision. The Court properly permitted the asking of the question, and appellant was bound by her answer. Again the matter of chastity or lack of chastity of the witness Elaine Elliot has only a remote connection with the case — the gist of the criminal action being the interstate transportation of a woman, be she a prostitue or a virgin, for the unlawful purpose prohibited by the White Slave Traffic Act.

Finally, as to the alleged inconsistent statements or testimony made by the witness in a previous divorce action, appellant was again permitted to question her and appellant was bound by her answers. The Court acted within its discretion. Any other disposition would have permitted the rehashing of the entire

previous divorce action and would have served only to lead the jury away on a tangent from the trial of Thomas T. Chamales, Jr.

It is submitted that no error was committed by restricting the cross-examination of Mrs. Elliot on such entirely collateral matters nor by refusing to permit appellant to contradict by use of the offered identifications.

Answer and Argument to Appellant's Specification of Error 3.

The appellant claims prejudicial error in that the Government attorney asked the appellant upon cross-examination if he knew one Tex Reed, and whether or not he had made the statement to one, Mr. Worsham of the F.B.I., that Tex Reed was a pimp and a gambler.

> "Q. Didn't you tell Mr. Worsham of the F.B.I. that Tex Reed was a high class gambler and pimp?
>
> Mr. Olson: I submit that counsel is inquiring into a collateral matter.
>
> The Court: And he'll be bound by the answer, the same as you are." (R. 253)

The appellant denied the statement and the inquiry ended.

The appellant had testified on direct examination that he never had any connection with houses of prostitution, or with the girls so employed (R. 244). He also testified on direct examination as to the automobile trip from Seattle to Yakima when he and Mrs. Elliot rode with Tex Reed and picked up Mrs. Reed en route at Cle Elum, Washington (R. 244, 245).

John W. Worsham, the F.B.I. agent, had earlier

testified that the appellant had admitted to him that Mrs. Reed was picked up by them at a house of prostitution in Cle Elum (R. 138).

In view of the above it was proper and material for the Government to cross-examine the appellant as to the identity of Tex Reed since appellant opened up the matter by testifying himself concerning Mr. Reed.

In any case, even if the matter be considered collateral, the matter was dropped immediately upon appellant's denial of the statement.

Answer and Argument to Appellant's Specification of Error 4.

Appellant predicates as error the reception of admissions made by the appellant to John W. Worsham, Special Agent of the Federal Bureau of Investigation, prior to his arrest. As admitted by appellant in his brief (page 39), the admissions were made on March 6, 1950. The appellant was not arrested until March 9, 1950.

Appellant does not urge that the admissions were not voluntarily made. Instead appellant contends that under the rule laid down in *McNabb v. United States,* 318 U. S. 332, and *Anderson v. United States,* 318 U. S. 350, admissions made prior to arraignment before the United States Commissioner are inadmissible.

The weakness of appellant's position is that the rule in the above cases is predicated upon an admission or confession taken between arrest and arraignment. We know of no case wherein a voluntary confession or admission of a defendant has been refused in evidence where taken *prior to arrest.*

Answer and Argument to Appellant's Specification of Error 5.

Appellant assigns as error the refusal of the Trial Court to permit the appellant to testify as to medical and psychiatric treatments taken by him since his discharge from the armed forces.

Appellant admits in his brief (page 42), that it is not contended that appellant was insane at the time of the commission of the offenses charged, and, further, that the offered testimony of the appellant as to medical treatments taken would not have proven insanity. Appellant took the same position during the trial of this cause (R. 218).

The test of one's mental responsibility for a criminal offense is whether he is capable of distinguishing between right and wrong at the time and with respect to the act committed. *Brewer v. Hunter,* 163 F. (2d) 341, 344.

For the purposes of conviction, there is no twilight zone between abnormality and insanity, and an offender is wholly sane or wholly insane. *Holloway v. United States,* 148 F. (2d) 665, 667, c.d. 334 U. S. 852.

The Trial Court allowed much latitude to appellant to testify as to his physical condition after his discharge from the service in 1945 to the date of these offenses (R. 216-218). The appellant was also permitted to testify that he secured treatments from a Doctor Seaman in Evanston, Illinois, from the time of his discharge until about three months prior to his testimony (R. 218) for a nervous condition and periodic headaches.

There was nothing in the nature of his illness as would in any manner affect his ability to distinguish

between right and wrong, and appellant does not so contend. The appellant testified fully and intelligently in this case. It is submitted that the Trial Court did not commit error in refusing to permit testimony as to additional treatments taken by appellant where mental irresponsibility was not contended.

Answer and Argument to Appellant's Specification of Error 6.

Appellant predicates error on the refusal of the Trial Court to give appellant's Requested Instructions No. 9, 11 and 16.

With reference to appellant's Requested Instruction No. 9, the Trial Court fully and completely instructed the jury to the effect that they must find an intent on the part of the appellant to have the woman transported engage in the outlawed conduct, and that that intent must be found to exist at the time of the interstate transportation (R. 263). This instruction was taken from *Mortensen v. United States,* 322 U. S. 369, 374. Appellant's precise objection to the above instruction is that it states that the intent to transport "must be found to exist at the time the transportation took place", while in the *Mortensen* case, the Court used the words "must be found to exist before the conclusion of the interstate journey". We submit that this is a distinction without a difference.

Concerning appellant's Requested Instructions 11 and 16, the Trial Court fully instructed that in order to find appellant guilty of the unlawful interstate transportation it was required that they find that the dominant object of the transportation be for the purposes outlawed by the White Slave Traffic Act (R. 263-265).

It is submitted that the Trial Court's instructions fully protected the appellant and that said instructions were in accordance with *Mortensen v. United States, supra,* and *Athanasaw v. United States,* 227 U. S. 326. See also *Tedesco v. United States,* 118 F. (2d) 737 (CCA 9).

Answer and Argument to Appellant's Specification of Error 7.

Appellant assigns as his last specification of error the fact that the United States Attorney read to the jury in question and answer form the testimony of Betty DesCorreau, and that an undue emphasis on her testimony resulted.

It is not contended that the United States Attorney did not correctly read the stenographer's record of the testimony of the witness. And it is not denied that the United States Attorney prefaced his reading of such testimony by stating, "And my recollection of her testimony is as follows" (R. 256).

The point raised by appellant is disposed of in the case of *United States v. Chiarella et al,* 184 F. (2d) 903 at page 908:

> "Chiarella's Point II is an objection that the prosecutor in his address to the jury read as testimony from a paper which he held in his hand. That paper was a stenographic record of the *actual testimony;* and no more need be said."

It is respectfully submitted that the verdict of the jury and the judgment of the Court is in all respects sound and proper and should be affirmed.

Respectfully submitted,

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